

EXHIBIT A

1 THE HONORABLE JOHN C. COUGHENOUR

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6
7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

9 MARIA AGNE, on her own behalf and on
10 behalf of other similarly situated persons,

11 Plaintiff,

12 v.

13 PAPA JOHN'S INTERNATIONAL, INC.,
et al.,

14 Defendants.

Case No. 2:10-cv-01139-JCC

**SUPPLEMENTAL DECLARATION OF
ALBERT H. KIRBY IN OPPOSITION TO
DEFENDANT JTF ENTERPRISES, INC.'S
MOTION TO DISMISS**

15 I, Albert H. Kirby, declare as follows:

16 1. I am an attorney of record for Plaintiff Maria Agne in this action. I am over the
17 age of 18 years. I am competent to testify as to the matters stated herein. I make this declaration
18 based upon my own personal knowledge.

19 2. The deposition of Defendant Kevin Sonneborn took place on January 23, 2012. I
20 received a copy of the transcript for this deposition on February 1, 2012. Attached as *Exhibit 7*
21 are excerpts from the transcript of Mr. Sonneborn's deposition.

22 I declare under penalty of perjury under the laws of the United States of America that the
23 foregoing is true and correct. Dated this 3rd day of February 2012 in Seattle, Washington.
24

25 /s/ Albert H. Kirby
26 Albert H. Kirby, WSBA #40187

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MARIA AGNE, on her own behalf)
and on behalf of other)
similarly situated persons,)
Plaintiff,)
vs.) No. 2:10-cv-01139-JCC
PAPA JOHN'S INTERNATIONAL,)
INC., a Delaware corporation,)
et al.,)
Defendants.)

DEPOSITION UPON ORAL EXAMINATION
OF
KEVIN SONNEBORN

9:50 A.M.

JANUARY 23, 2012

1325 FOURTH AVENUE, SUITE 540

SEATTLE, WASHINGTON

REPORTED BY: CHERYL L. O'HALECK, CCR No. 2226

1	EXHIBITS FOR IDENTIFICATION	PAGE
2	8 12/17/2007 Papa John's Loyalty Program	49
3	Franchise Agreement, Standard Restaurant,	
4	for Rain City Pizza, LLC, Store No. 3498	
5	9 October 2009 PowerPoint presentation, the	79
6	first page of which has the title, "Target,	
7	Picture Text, and Sell"	
8	10 10/28,2009 email to Mike Frizzell, et al.,	80
9	from Jennifer Fry, Subject: Setting up	
10	Picture Mail Account; SPJ 000235	
11	11 String of email, the top one of which is	82
12	dated 10/28/2009 to Mike Frizzell from	
13	Robert Wisnovsky, Subject: Re: Jim's Numbers	
14	This Week; SPJ 000236 - 000237	
15	12 11/2/2009 email to Mike Frizzell and Robert	85
16	Wisnovsky from Jennifer Fry, Subject: Calls	
17	for this weekend; SPJ 000238	
18	13 String of email, the top one of which is	85
19	dated 11/4/2009 to Mike Frizzell from	
20	Jennifer Fry, Subject: Re: Upcoming texting;	
21	SPJ 000239.	
22	14 String of email, the top one of which is	86
23	dated 11/18/2009 to Jennifer Fry and Robert	
24	Wisnovsky from Mike Frizzell, Subject: RE:	
25	Upcoming texting; SPJ 000240 - 000241	

1 SEATTLE, WASHINGTON; JANUARY 23, 2012

2 9:50 A.M.

3 --oOo--

4
5 KEVIN SONNEBORN,
6 sworn as a witness by the Certified Court Reporter,
7 testified as follows:

8
9 EXAMINATION

10 BY MR. HEYRICH:

11 Q. Good morning, Mr. Sonneborn. Did I pronounce
12 that correctly?

13 A. That's right.

14 Q. Donald Heyrich. We met just a moment ago.
15 I'm one of the attorneys for Maria Agne in her lawsuit.
16 And we're here to take your deposition in connection
17 with that case. Is that your understanding?

18 A. Yes.

19 Q. What's your professional address?

20 A. 15311 Northeast 90th Street in Redmond,
21 Washington.

22 Q. Have you been deposed before?

23 A. Yes.

24 Q. How many times?

25 A. Just once.

1 right?

2 MR. HEYRICH: Thank you.

3 MR. LAWRENCE: If you understand the question,
4 you can go ahead and answer.

5 A. No.

6 Q. (BY MR. HEYRICH:) I'd like to talk about your
7 business so we can understand the entities involved and
8 how it's structured, okay?

9 Can you list off for me any Papa John's
10 entities in which you have ownership? And I'm not
11 talking about locations of stores right now, but -- I
12 mean, there is Rain City Pizza, Rose, and so forth,
13 those kinds of things. So the question is what Papa
14 John's entities do you have an ownership in?

15 A. Do you want to break that down for me and ask
16 me some questions?

17 Q. What businesses do you own that do any
18 business with Papa John's?

19 A. Seattle PJ Pizza, LLC houses 18 Papa John's.

20 Q. Sorry. Can you say that again, please?

21 A. Seattle PJ Pizza, LLC houses 18 Papa John's
22 that are in the Seattle and peninsula area.

23 Q. What is the term "houses 18 Papa John's"? Is
24 that a separate business? I didn't quite understand.

25 MR. LAWRENCE: You mean operate, is that what

1 you mean?

2 THE WITNESS: Operate.

3 Q. (BY MR. HEYRICH:) Oh, okay. Do you have
4 ownership in any other business entity that does
5 business with PJI?

6 A. Yes. We also have Rose City Pizza, LLC, which
7 operates eleven stores in the Portland slash Vancouver
8 area.

9 Q. Any others?

10 A. There is an entity, PJ Sound Pizza, LLC that
11 houses nine stores in the Everett/Snohomish County area.

12 Q. Any others?

13 A. Rain City Pizza, LLC has no stores, doesn't
14 operate any stores. The only transaction in Rain City
15 Pizza is a loan that we had with two of our previous
16 partners. So it only contains loan transactions.

17 Q. Any others?

18 A. PJ Sound Pizza is a -- is the only member in
19 an entity titled Papa Washington, LLC. Papa Washington,
20 LLC represents my interest in 50 percent of Seattle PJ
21 Pizza and owns 100 percent of PJ Sound Pizza. It
22 doesn't directly operate stores.

23 Q. Are there any other business entities that
24 you're involved in that do business with Papa John's in
25 any way?

1 A. Seattle PJ Pizza.

2 Q. And what's his area?

3 A. Currently, he oversees all of the Seattle
4 stores.

5 Q. You're familiar with a company called
6 On Time 4 U, are you not?

7 A. Yes.

8 Q. How did you first learn of On Time 4 U?

9 A. In the fall of 2009, my best recollection is
10 there were conversations amongst other franchisees about
11 the program that online -- On Time 4 U was promoting.

12 MR. HEYRICH: Could you please read that
13 answer back?

14 THE COURT REPORTER: "Answer: In the fall of
15 2009, my best recollection is there were conversations
16 amongst other franchisees about the program that online
17 -- On Time 4 U was promoting."

18 Q. (BY MR. HEYRICH:) Who was involved in these
19 conversations that you're aware of?

20 A. Jim Fry, a gentleman by the name of Rick
21 Mohler.

22 MR. LAWRENCE: How do you spell his last name?

23 THE WITNESS: M-O-H-L-E-R.

24 Q. (BY MR. HEYRICH:) What's Mr. Mohler's -- how
25 is he connected with these conversations? Is he a

1 franchisee?

2 A. He's a franchisee.

3 Q. Do you know where his franchises are?

4 A. Montana.

5 Q. Any other franchisees that you remember being
6 involved in these conversations in the fall of 2009?

7 A. Those are the only two that I recall.

8 Q. Was Mr. Stepusin involved in these
9 conversations at all, to your recollection?

10 A. To my recollection, he was not.

11 Q. How did you get involved in these
12 conversations?

13 A. After I heard the topic, Mike Frizzell pursued
14 more information.

15 Q. And how did you hear about it?

16 A. I had overheard the conversation earlier, and
17 I asked Mike to go get more information about the
18 program.

19 Q. Where was this conversation that you
20 overheard?

21 A. I don't recall exactly. I believe it was in
22 our offices.

23 Q. Was Mr. Fry in your office, Jim Fry?

24 A. Yes.

25 Q. And was Mr. Mohler in your office?

1 A. Yes.

2 Q. And Mr. Fry was speaking with Mr. Mohler,
3 correct?

4 A. That is correct.

5 Q. And you overheard the conversation?

6 A. That is correct.

7 Q. And that's how you first became aware of text
8 message marketing?

9 A. Yes.

10 Q. Did you talk with Mr. Frizzell -- did you send
11 him an email in writing communicating with him, or was
12 this a conversation where you instructed him to get more
13 info?

14 A. This was a conversation.

15 Q. Did you tell him how to go about obtaining
16 more information?

17 A. I don't recall how I asked him to get more
18 information.

19 Q. Did he obtain more information?

20 A. Yes.

21 Q. How do you know that?

22 A. Because he came back to me and recommended a
23 test.

24 Q. Who did he talk to before he recommended a
25 test?

1 MR. GUNTER: Objection; foundation.

2 A. I'm not sure who he talked to.

3 Q. (BY MR. HEYRICH:) Is Mr. Fry affiliated with
4 On Time 4 U?

5 MR. GUNTER: Objection; form, foundation.

6 A. I don't know the answer to that.

7 Q. (BY MR. HEYRICH:) The conversation that
8 you've described, did you hear the name On Time 4 U?

9 A. Yes.

10 Q. And so that would have been this conversation
11 with Mr. Mohler and Mr. Fry?

12 A. Uh-huh.

13 MR. GUNTER: That is a yes?

14 THE WITNESS: Yes.

15 Q. (BY MR. HEYRICH:) And do you understand
16 Mr. Frizzell to then have contacted On Time 4 U for more
17 information?

18 MR. GUNTER: Objection.

19 A. I don't know the answer to that. I don't know
20 where Mike got the information.

21 Q. (BY MR. HEYRICH:) What information did he
22 convey to you about text message marketing? And by
23 "he," I mean Mr. Frizzell.

24 A. He conveyed that we could do a test of six
25 stores.

1 Q. Anything else?

2 A. He wanted to try it.

3 Q. What was the benefit to your business of
4 trying it, if any?

5 A. If the program worked, then our sales would
6 increase.

7 Q. Now, you've talked about Mr. Fry in the past,
8 right? We discussed that earlier.

9 A. (Witness nods head.)

10 Q. Does Mr. Fry own any Papa John's franchises,
11 to your knowledge?

12 A. To my knowledge, he does own franchises.

13 Q. Those are in southern Oregon I believe,
14 correct?

15 MR. GUNTER: Objection.

16 A. I believe so.

17 Q. (BY MR. HEYRICH:) Was Jim Fry encouraging the
18 use of text message marketing when he was in this
19 conversation with Mr. Mohler?

20 MR. GUNTER: Objection.

21 A. Mr. Fry endorsed the program.

22 Q. (BY MR. HEYRICH:) Had he already done some by
23 this time, to your knowledge?

24 MR. GUNTER: Objection; foundation.

25 A. I don't know. I don't know the answer to

1 that. It is my belief that he did.

2 Q. (BY MR. HEYRICH:) Did he discuss his
3 experience with text message marketing, at that time?

4 A. The gist of the conversation between
5 Mr. Mohler and Mr. Fry was that it was an effective
6 tool.

7 Q. How were you involved in text message
8 marketing from the time that you had this conversation
9 with Mr. Frizzell forward in 2009?

10 MR. LAWRENCE: Now you mean personally?

11 Q. (BY MR. HEYRICH:) Yes, personally. Were you
12 involved at all, in any way?

13 A. Acting on behalf of Seattle PJ Pizza and Rose
14 City Pizza, I viewed my role as one to assess its
15 effectiveness, if it was a program we wanted to
16 continue.

17 Q. How did you go about assessing its
18 effectiveness?

19 A. We tested six stores. I used the coupon
20 redemption report to gauge the effectiveness of the
21 plan.

22 Q. What sort of data did you use to gauge its
23 effectiveness from those reports?

24 A. The coupon redemption report tells you the
25 numbers that were used and it tells you the sales that

1 MR. HOWARD: Anyway, we can discuss that
2 later.

3 Q. (BY MR. HEYRICH:) Have you ever attended a
4 presentation put on by anyone affiliated with
5 On Time 4 U where there was a PowerPoint shown?

6 A. I don't recall ever being at a presentation
7 with this PowerPoint.

8 (Deposition Exhibit 10 was marked for
9 identification.)

10 Q. (BY MR. HEYRICH:) We received a number of
11 emails where your name is listed at the top. Do you see
12 your name at the top of the first page of Exhibit 10?

13 A. Uh-huh.

14 Q. Do you know why your name appears there in
15 this document?

16 A. When I was asked to get this information, I
17 arranged to have access to Mike Frizzell's email so that
18 I could access the information.

19 Q. How did you obtain access to Mike Frizzell's
20 email?

21 A. A gentleman by the name of Paul Wichelmann
22 handles our network, and I asked him to set it up.

23 Q. What is a POS system?

24 A. A POS system is the computer system that's in
25 the stores. That's how you manage the day-to-day

1 A. His name is Peter Ogg.

2 Q. And how did you learn that Mr. Mohler had
3 apparently used On Time 4 U?

4 A. He wanted to try to start his own texting
5 program and asked me if I was interested.

6 Q. And I take it Jim Fry reported -- talked to
7 you about his own experience, is that correct?

8 A. On occasion, he did.

9 Q. Have you heard of any other franchisee using
10 On Time 4 U for text marketing?

11 A. Just those.

12 Q. In Mr. Stepusin's comments when you were
13 discussing your results and he mentioned other
14 franchisees, was he specific at all?

15 A. The only part of his comment that I remember
16 was that he said other Northwest franchisees.

17 (Deposition Exhibit 12 was marked for
18 identification.)

19 Q. (BY MR. HEYRICH:) Just looking at Exhibit 12,
20 is this an email that you pulled from your company's
21 email files?

22 A. Yes, it was.

23 (Deposition Exhibit 13 was marked for
24 identification.)

25 Q. (BY MR. HEYRICH:) Do you have Exhibit 13?

1 A. I do.

2 Q. Is this an email that you pulled from your
3 company's email files?

4 A. Yes.

5 Q. At the time that Mr. Frizzell was engaged in
6 collecting the data necessary for On Time 4 U to engage
7 in text message marketing, were you aware of his
8 activities, Mr. Frizzell's activities?

9 MR. LAWRENCE: Object to the form.

10 A. I knew that he was trying to put together the
11 test.

12 Q. (BY MR. HEYRICH:) One question. The email
13 says, "Jim put together a step-by-step instruction sheet
14 that might eliminate the need for a conference call.
15 I'm attaching it here."

16 We didn't receive any attachment. Did you?

17 A. I don't remember if there was an attachment or
18 not.

19 Q. Do you still have a copy of this email in
20 electronic form?

21 A. Yes.

22 (Deposition Exhibit 14 was marked for
23 identification.)

24 Q. (BY MR. HEYRICH:) Looking at Exhibit 14, is
25 this an email that you've obtained from your company's

1 email files?

2 A. Yes, it is.

3 Q. Do you understand it to be communications
4 between Mr. Frizzell and representatives of On Time 4 U?

5 A. Yes, I do.

6 Q. Do you have a copy of this email in electronic
7 form?

8 A. Yes, I do.

9 Q. Like the last one, there is a reference to an
10 attachment. We'll follow up on that.

11 (Deposition Exhibit 15 was marked for
12 identification.)

13 Q. (BY MR. HEYRICH:) Looking at Exhibit 15, is
14 this a document that you obtained from your company's
15 email files?

16 A. Yes, it is.

17 Q. Do you understand it to be communications
18 between Mr. Frizzell and representatives of On Time 4 U?

19 A. Yes, I do.

20 (Deposition Exhibit 16 was marked for
21 identification.)

22 Q. (BY MR. HEYRICH:) Handing you Exhibit 16, is
23 this a document you obtained from your company's email
24 files?

25 A. Yes, it is.

1 Q. Now, you don't recall these specific
2 complaints I understand, is that right?

3 A. That's correct.

4 Q. Do you recall, in general, complaints coming
5 in at the time you were doing the testing in 2009?

6 A. I don't recall getting complaints in 2009.

7 Q. If you were to receive complaints like this,
8 is it your practice to give them attention? I mean, you
9 wouldn't completely ignore it, right?

10 A. I don't respond to the complaints.

11 Q. Do you read them?

12 A. I don't even read every complaint. The
13 operating -- the area managers respond to the complaints
14 and the marketing person responds to the complaints.

15 Q. Does Mr. Stepusin ever get involved in the
16 complaints, or has he?

17 A. I don't know the answer to that.

18 Q. I just wanted to clarify a couple of things.
19 When we use the initials "PJI," we're referring to Papa
20 John's International, Inc., right?

21 A. That's correct.

22 Q. You mentioned a meeting with Jim Fry in person
23 in your office. Are we talking about your office in
24 Redmond?

25 A. Yes.

1 Q. Do you know if the texts went out to the
2 Greenwood store?

3 A. I can't recall the redemption for every store
4 off the top of my head.

5 Q. And what would the redemption tell you?

6 A. If people used it.

7 Q. How many stores operated by the businesses you
8 own had text messages sent on its behalf?

9 MR. LAWRENCE: Excuse me. Could I have that
10 back?

11 MR. HEYRICH: Sorry.

12 MR. LAWRENCE: Yeah, I thought it was just me.

13 Q. (BY MR. HEYRICH:) So text messages were sent
14 by On Time 4 U on behalf of your stores, correct? And
15 by "your," I mean stores owned by your companies.

16 MR. LAWRENCE: Could you read that back,
17 please?

18 THE COURT REPORTER: "Question: So text
19 messages were sent by On Time 4 U on behalf of your
20 stores, correct? And by "your," I mean stores owned by
21 your companies."

22 MR. LAWRENCE: Misstates his testimony.

23 You can answer.

24 A. As I said before, I submitted information for
25 Wisnovsky to have the ability to send out texts.

1 Several of the stores that I submitted information for
2 had zero redemptions. So I can't come to the conclusion
3 that he sent out texts for all the stores that I
4 submitted.

5 Q. (BY MR. HEYRICH:) How many stores did you
6 submit data for?

7 MR. LAWRENCE: And "you" being the company?

8 MR. HEYRICH: Yeah, I'm sorry.

9 MR. LAWRENCE: That's okay.

10 A. I believe the total was between 11 and 13.

11 MR. LAWRENCE: And again, excuse me, this is
12 April of 2009?

13 THE WITNESS: Yes.

14 Q. (BY MR. HEYRICH:) I'm sorry. So the 11 to 13
15 stores in April 2009 --

16 A. I'm sorry. I was counting some stores from
17 November. There were six stores in November, there was
18 eleven stores in April.

19 Q. To your knowledge, did any one store have more
20 than one time when text messages were sent by
21 On Time 4 U?

22 A. I don't recall if there were multiples for
23 individual stores.

24 Q. How would we figure that out, if we wanted to
25 piece together what stores had messages sent and which